Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)	CG Docket No. 04-208

COMMENTS OF THE
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

The Texas Office of Public Utility Counsel, ("Texas OPC"), offers these initial comments pursuant to the Second Further Notice of Proposed Rulemaking ("*Second FNPRM*") released in the above-referenced dockets on March 18, 2005. Texas OPC represents the interests of residential and small commercial telephone and electric customers before the Public Utility Commission of Texas, state and federal courts, the Federal Communications Commission ("Commission" or "FCC") and the Federal Energy Regulatory Commission. These initial comments respond to certain questions set forth in the *Second FNPRM*, including how the Commission should define the distinction between mandated and non-mandated charges for truth-in-billing purposes. Texas OPC reserves the right to submit comments in reply related to other questions posed in the *Second FNPRM* on or before July 25, 2005.

As stated in paragraph 39 of the *Second FNPRM*, "nearly six years after adoption of the *Truth-in-Billing Order* . . . consumers still experience a tremendous

amount of confusion regarding their bills" and that this confusion "inhibits their ability to compare carriers' service and price offerings, in contravention of the pro-competitive framework of the 1996 Act." Texas OPC agrees with this statement and believes that one way to alleviate the widespread consumer confusion is to end the misleading practice of labeling discretionary charges as "mandatory." Consequently, Texas OPC supports the Commission's tentative conclusion that "where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges."

Consistent with this conclusion, the Commission seeks comment on how to define the distinction between mandated and non-mandated charges for truth-in-billing purposes and presents basically two options on how to define the distinction.

The first option posed by the Commission was whether it should "define government 'mandated' charges as amounts that a carrier is *required* to collect directly from customers, and remit to federal, state or local governments." *Second FNPRM*, ¶ 40 (emphasis added). Under this option, government mandated charges would include truly mandatory charges such as state and local taxes, federal excise taxes on communications services, and some state E911 fees. Non-mandated charges would then consist of: 1) government *authorized but discretionary* fees, including fees that carriers remit pursuant to regulatory action, such as telecommunications relay service and universal service charges, and 2) "administrative fees and other purely discretionary charges." *Second FNPRM*, ¶ 40. Texas OPC supports this first option for defining government mandated charges because it most closely tracks what consumers understand "mandatory" to

mean.[1] Texas OPC agrees with the Commission's earlier statements (in a universal service context) that it is misleading to imply that a charge is "mandated" or that the carrier has no choice but to include a charge on its bill when in actuality, it is the carriers' *business decision* whether, how, and how much of such costs they choose to recover directly from consumers through separately identifiable charges. *Second FNPRM,* at ¶ 40, *citing Truth-in-Billing Order,* 14 FCC Rcd at 7527, para. 56 (citations omitted). Since the very name, "truth in billing" connotes openness and straightforward, non-deceptive bills, this first option is the best option to further the Commission's policies and goals for truth in billing because it is the most clear cut and plain speaking.

Further, the Commission asked commenters in paragraph 42 of the *Second FNPRM* to assess the ease or difficulty of administering any proposed distinction between government mandated and non-mandated charges. Logically, this first option would be less difficult to administer because the distinction between the two categories is "cleaner" – there are less potentially "grey areas" in which charges may fall. Thus, it would be easier to track compliance and easier to implement as well, since the number of charges that federal, state and local governments require carriers to collect and remit to the government is far smaller than the number of charges carriers have the discretion to impose.

Under the second option, the Commission would distinguish "between government mandated and non-mandated charges . . . based on whether the amount listed is remitted directly to a governmental entity or its agent." *Second FNPRM,* at ¶ 41.

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[1] The *Oxford Dictionary and Thesaurus*, American Edition (1996), defines Mandatory as "of or conveying a command" or "compulsory," and lists "compulsory, obligatory, requisite, required,

Under this definition, "'mandated' charges would differ from non-mandated in that non-mandated charges would be composed of fees collected by carriers that go to the carrier's coffers, and which are not directly related to any regulatory action or government program. *Second FNPRM*, at ¶ 41. Texas OPC opposes the adoption of this second option because consumers' billing confusion is the result of the current practice of labeling non-mandatory charges in a manner that suggests that the government requires this charge be included and that allows the carriers to hide the truth that the decision to include the charge was theirs to make. This intermingling of truly mandatory charges with those that are merely discretionary interferes with a customers' ability to take advantage of the competitive marketplace. Customers should know whether a charge is carrier imposed; if a customer objects to such a charge, she can negotiate with her carrier to have it removed or shop the competitive marketplace for a carrier that chooses not to impose such a charge. Hiding carrier imposed, discretionary charges among the government mandated charges or otherwise labeling them in a matter that suggests that the government requires the charge, robs the consumer of her right to make an informed choice of carrier.

Finally, the Commission compared the two proposed options to actions taken by the states and industry. As the Commission recognized, the first option, which limits what may be included in a "government mandated charges" section of a bill to only those charges required by, and remitted to, the government, is consistent with the Assurance of Voluntary Compliance ("AVC") agreements negotiated by thirty-two states' Attorneys General, including Texas, with Verizon Wireless, Cingular Wireless and Sprint PCS. *Second FNPRM*, at ¶ 40. With regard to consumer bills, those legally binding and

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essential, demanded, necessary, needed" as synonyms.

enforceable AVC agreements require the wireless signatories to separate "'taxes, fees, and other charges that [they are] required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs' from monthly charges and all other discretionary charges, except when the taxes, fees and other charges are bundled into a single rate with monthly charges for service and all other discretionary charges."[2] As noted by the Commission, the carriers also agreed to make point of sale disclosures describing all charges appearing on consumers' bills, and further agreed to not represent, expressly or by implication, that the discretionary costs recovery fees are taxes.[3]

The AVC agreements also provide that if a wireless signatory merges with another carrier not a signatory to the agreement, the terms of the AVC agreements shall apply to the other carrier. As a result of this provision and the recent AT&T Wireless/Cingular merger and the Nextel/Sprint merger (pending approval), most wireless customers served in over two-thirds of the country will be protected by the terms of these three AVC agreements. The Commission's adoption of rules that follow the first option would be consistent with the standards set in the AVC agreements and provide telecommunications customers throughout the country, whether wireline or wireless, the same benefit of transparency in bills.

The Commission correctly noted that the proposed second option is akin to certain provisions found in the voluntary, wireless industry-developed CTIA Consumer Code. The CTIA Consumer Code is an inferior model on which to base the Commission's proposed truth-in-billing rule amendments when compared to the AVC agreements

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[2] *Second FNPRM*, at 11, *citing* Verizon AVC at 14, para. 36(a).

discussed in the above paragraphs. This is true not only for the reasons that option two is inferior to option one but also because of the manner in which it was developed. Unlike notice and comment rulemaking or even the multi-party adversarial setting in which the AVC agreements were reached, only one point of view, that of the wireless provider, was represented when developing the CTIA Consumer Code. While it is laudable that the wireless industry set forth voluntary standards for themselves, it does not reflect the voice of consumers and their legally appointed representatives.

For the above reasons, the Texas Office of Public Utility Counsel supports the Commission's tentative conclusion that "where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges," and further supports the Commission's first option on how to distinguish government mandated from non-mandated charges.

June 24, 2005

Respectfully submitted,

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3 *Second FNPRM*, at 11, *citing* Verizon AVC at 5-9, paras. 17-23 and at 14, para. 36(b).